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September 13, 2013

Via Email and Hand-Delivery

*Also admitted in
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Luly E. Massaro, Clerk
Division of Public Utilities & Carriers
89 Jefferson Boulevard
Warwick, RI 02888

Re: Rhode Island Fast Ferry, Inc. Application for Certificate of Public Convenience and Necessity (CPCN) license to operate a fast ferry between Quonset Point, North Kingstown to Old Harbor, Block Island - Docket D-13-51

Dear Ms. Massaro:

Enclosed for filing please find the "Joint Reply of Block Island Ferry Services LLC d/b/a Block Island Express and Intrastate Nav. Company to Rhode Island Fast Ferry, Inc.'s Objection."

This letter and the joint reply were e-mailed to the attached service list.

Sincerely,


Christopher H. Little

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CHL/alc

cc: Service List Docket No. D-13-51

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**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS**

IN RE: Rhode Island Fast Ferry, Inc. :
Application for Certificate of Public :
Convenience and Necessity (CPCN) :
license to operate a fast ferry : Docket No. D-13-51
between Quonset Point, North :
Kingstown to Old Harbor, Block :
Island :

**JOINT REPLY OF BLOCK ISLAND FERRY SERVICES LLC/D/B/A
BLOCK ISLAND EXPRESS AND INTRASTATE NAV. COMPANY TO
RHODE ISLAND FAST FERRY, INC.'S OBJECTION**

Block Island Ferry Services LLC d/b/a Block Island Express (“Block Island Express”) and Intrastate Nav. Company (“Intrastate”) (collectively “Movants”) clearly and unequivocally meet the requirements of Rule 17 by alleging direct, particularized adverse effects on their interests. At page 5 of its objection, Rhode Island Fast Ferry, Inc. (“RIFF”) acknowledges that, if it is granted a CPCN, it will “have to seek either an amendment to an existing CRMC permit for dockage, or seek a new CRMC Assent or permit to build a new dock in the Town of New Shoreham.” The reference to amending an existing CRMC permit, by process of elimination, leads to the Filippi Dock as an alternative being pursued by RIFF.

RIFF’s insistence on docking in Old Harbor, and its refusal to specify where and when it will dock, require Movants to seek intervention to protect their particularized interests in their dock, as well as to protect the more general public interest in minimizing dangerous congestion in the harbor and channel. RIFF’s argument that Movants, particularly in light of the probability of RIFF’s utilization of the Filippi Dock, must wait for the CRMC proceeding is nonsense, and

Rule 17 does not require as such.¹ RIFF's application presents a directly adverse effect to the Movants' interests that are not represented by other parties. The facts alleged in Movants' motions are more than sufficient in showing that it is "necessary and appropriate" for intervention by the Movants in this docket. Division Rule 17(b).

Essentially, RIFF is seeking summary dismissal of Movants' motions on the merits, based upon decisions in past proceedings by this Division in granting conditional CPCNs. But whether this Division does or does not grant a conditional CPCN, is not relevant to the issue of whether Movants have met the standards required by Rule 17(b), which they most clearly have. Respectfully, this Division cannot properly make an assessment of the merits of RIFF's CPCN application, and for that matter, determine the extent to which any conditions should be applied, if the Division does not consider the evidence that will be offered by Movants with respect to existing conditions in Old Harbor and the impacts that will be sustained if the Filippi Dock is in fact to be used.² The Division cannot properly resolve the application for the CPCN without considering the potential impacts that RIFF's operations will cause to the public and private interests. See Capaldo v. Pub. Util. Hearing Bd., 70 R.I. 15, 38 A.2d 649, 651 (1944) (describing the CPCN inquiry as "[w]hat is conducive to the general public need, convenience, interest, safety, protection and welfare"). Where RIFF is planning to dock its vessels figures prominently into whether the convenience, safety, and welfare of the public will be negatively impacted. This

¹ Movants will not address RIFF's other arguments —i.e. because Movants are Connecticut companies they cannot possibly represent the public interest or that Movants' motions are thinly veiled efforts to avoid competition with RIFF. These arguments are untenable and furthermore, Movants completely acknowledge that RIFF does not compete with their businesses.

² Similarly, Block Island Express's captains certainly will provide evidence of congestion and navigation impacts. Congestion affects Block Island Express's interests in operating a safe and efficient ferry service. These interests are "of such a nature that Movant's participation may be in the public interest," and therefore also justify Block Island Express's intervention in this docket. Division Rule 17(b)(3). That assessment of marine congestion is also within the potential purview of the Harbormaster, the Town and the Attorney General is of no moment to the question of Block Island Express's intervention. Compare Division Rule 17(b)(2) allowing intervention based on the interest of the movant that is not already adequately represented by other parties with Division Rule 17(b)(3).

is not the simple situation of conditioning an allowance of a CPCN upon obtaining financing, acquiring a boat, and resolving zoning issues. Compare Interstate Navigation Company d/b/a Block Island Ferry v. Division, 1999 WL 813603 (R.I. Super. Aug 31, 1999). The unknowns left open by those conditions did not affect the substance of the CPCN. But here, the uncertainties are major factors which must be weighed by the Division in determining whether the application is in the interest of public necessity and convenience.

For the reasons stated herein, as well as in their Motions to Intervene, Movants Block Island Ferry Services, LLC d/b/a Block Island Express and Intrastate Nav. Company respectfully request that the Division grant their motions to intervene as full-party protestants and to afford both parties the opportunity to present reasoned opposition to RIFF's application.

BLOCK ISLAND FERRY SERVICES
D/B/A BLOCK ISLAND EXPRESS and
INTRASTATE NAV. COMPANY

By its Attorneys,

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Date: 9/13/13

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CERTIFICATION

I hereby certify that I emailed, and mailed or hand-delivered where required, a true copy of the within “Joint Reply of Block Island Ferry Services LLC d/b/aBlock Island Express and Intrastate Nav. Company to Rhode Island Fast Ferry, Inc.’s Objection” on this 13th day of September, 2013, upon the following:

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